

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Terry Tyrone Pullen, Jr.,

Plaintiff,

v.

Case No. 1:17cv255

Mr. Combs, *et al.*,

Judge Michael R. Barrett

Defendants.

ORDER

This matter is before the Court on the Report and Recommendation filed by the Magistrate Judge on August 15, 2018 (Doc. 51).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). No objections to the Magistrate Judge's Report and Recommendation have been filed.

Accordingly, it is **ORDERED** that the Report and Recommendation (Doc. 51) of the Magistrate Judge is hereby **ADOPTED**. Consistent with the recommendation by the Magistrate Judge, the Defendants' Motion to Dismiss (Doc. 29) is **GRANTED** as to: (1) plaintiff's Eighth Amendment claims for excessive force and deliberate indifference to medical needs against defendants Combs, Bailey, Sergeant Felts, Oppy, Shaw and Hart arising out of the October 9, 2015 OC spray incident described in the complaint, including Hart's alleged deliberate indifference on October 15, 2015; and (2) plaintiff's claims for deliberate indifference to his medical needs against defendants Hill and Haywood related to the October 11, 2015 incident. Defendants' Motion to Dismiss (Doc. 29) is **DENIED** as to the following claims for relief: (1) plaintiff's Eighth

Amendment claim for failure to protect against defendant Shaw arising out of the October 11, 2015 incident; (2) plaintiff's Eighth Amendment claim for excessive force against defendants Shaw and Sergeant Felts related to the October 30, 2015 OC spray incident; and (3) plaintiff's Eighth Amendment claims for excessive force against defendants Bear, Ms. Felts and Sergeant Felts based on the November 10, 2015 incident.

Defendant Wamsley 's Motion to Dismiss (Doc.44) is **DENIED**.

IT IS SO ORDERED.

s/Michael R. Barrett
Michael R. Barrett
United States District Judge